

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST
FOR REVIEW BY:

GILBERTA A. DORSEY

Petitioner.

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CHARGE NO.: 2008SA3351

EEOC NO.: 21BA82091

ALS NO.: 09-0497

ORDER

This matter coming before the Commission by a panel of three, Commissioners Munir Muhammad, Diane Viverito and Gregory Simoncini presiding, upon Gilberta A. Dorsey's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2008SA3351; and the Commission having reviewed *de novo* the Respondent's investigation file, including the Investigation Report and the Petitioner's Request, and the Respondent's response to the Petitioner's Request; and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reasons:

1. On May 19, 2008, the Petitioner filed a charge of discrimination with the Respondent in which she alleged Allstate Insurance Company (the "Employer") discharged her because of her age, 55 (Count A), and sex, female (Count B), in violation of Section 2-102(A) of the Illinois Human Rights Act (the "Act"). On August 6, 2009, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On September 9, 2009, the Petitioner timely filed her Request.
2. The Employer is licensed to sell and service insurance and financial products. The Employer hired the Petitioner on April 30, 2007, as a Regional Sales Consultant. The Petitioner was 54 years old at the time she was hired. Jason Bennett, the Employer's Division Sales Manager, made the decision to hire the Petitioner. The Employer assigned the Petitioner work in the Southeast Region of the United States.
3. According to the Employer's Job Profile for the Regional Sales Consultant position, the Petitioner's job was . . . "To work closely with producers and centers of influence to expand the number of sellers and increase overall production."
4. In August of 2007, the Petitioner went on a sales trip in her region. On August 8, 2007, Bennett and Senior Manager Mathew Knight met with the Petitioner concerning negative feedback regarding her sales presentations. In particular, it was reported to Knight and Bennett that the Petitioner appeared to lack product knowledge. Knight and Bennett instructed the Petitioner to become an expert on the Employer's new products in time for her next sales trip in September 2007.

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

5. The Petitioner gave sales presentations on September 13th and 14th. On September 21, 2007, Bennett contacted an Exclusive Financial Specialist ("EFS") from the Petitioner's region. The EFS informed Bennett that the Petitioner's presentations were poor because the Petitioner demonstrated a limited knowledge and understanding of the Employer's new products.
6. On October 4, 2007, the Employer issued the Petitioner an Unacceptable Performance Notification ("UPN"). The Employer gave the Petitioner sixty days to improve her performance and her knowledge and understanding of the Employer's new products.
7. On November 1, 2007, the Employer gave the Petitioner a UPN Follow-Up and Final Review (the "Final Review"). The Final Review informed the Petitioner that she had failed to significantly improve her performance and her knowledge of the Employer's new products. The Final Review stated if the Petitioner failed to meet the Employer's expectations, the Petitioner could be terminated.
8. In December 2007, Bennett determined the Petitioner had failed to improve her performance. Bennett recommended that the Petitioner be discharged. The Employer's Human Resource Senior Manager concurred with Bennett's recommendation. Thereafter, on December 14, 2007, the Employer discharged the Petitioner.
9. In her charge and in her Request, the Petitioner contends she was discharged because of her age and sex. The Petitioner argues that two younger male co-workers, "C.W." and "P.M.", had performance issues similar to hers, but neither was discharged.

CONCLUSION

The Commission's review of the Respondent's investigation file leads it to conclude the Respondent properly dismissed all counts of the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D).

In this case, there is no substantial evidence of a *prima facie* case of either age or sex discrimination, which requires proof that the Petitioner falls within a protected class; that she was performing her work satisfactorily; that she was subjected to an adverse action, and that the Employer treated a similarly situated employee outside of the Petitioner's protected classes more favorably under similar circumstances. See Marinelli v. Human Rights Commission, 262 Ill.App.3d 247, 634 N.E.2d 463 (2nd Dist. 1994).

There is no substantial evidence the Employer treated a similarly situated employee outside the Petitioner's protected classes more favorably. The alleged comparables, "C.W." and "P.M.", are not similarly situated to the Petitioner. Unlike the Petitioner, the evidence shows "C.W." and "P.M." had met the Employer's performance expectations, and the Employer had not received multiple complaints regarding their sales presentations.

The Commission also finds no substantial evidence of pretext. It is well documented in the file that the Employer had given the Petitioner numerous opportunities to improve her performance before it discharged her. As the Respondent correctly points out, the Petitioner's self-perception that she was performing satisfactorily does not provide substantial evidence that the Employer's stated reason for terminating the Petitioner was a pretext for discrimination. See Karazanos v. Navistar International Transportation Corp., 948 F.2d 332, 337-8 (7th Cir. 1991), *quoting*, Weihaup v. American Medical Ass'n, 874 F.2d 419, 428 (7th Cir. 1989).

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of her charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of the Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Allstate Insurance Company, as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

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Entered this 8th day of March 2010.

Commissioner Munir Muhammad

Commissioner Gregory Simoncini

Commissioner Diane Viverito